IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. 709 of 200

Date of Decision: 27-12-2006.

Kamal Singh. Petitioner

Versus

State of H.P. and others. Respondents.

Coram
Hon'ble Mr. Justice Deepak Gupta, J.
Hon'ble Mr. Justice S.S.Thakur , J.

Whether approved for reporting[1]?

For the petitioner	**:**	**Shri R.K.Sharma & Bindiya Sharma, Advocates.**
For the respondents I to 3:		**Mr. M.S. Chandel, Advocate General with Mr.R.M. Bisht, Dy. A.G.**
For the respondent No.4.		**Mr. Lovnesh Kanwar, Advocate.**

Surinder Singh, J. (oral).

This petition has been filed by the petitioner under Articles 226/227 of the Constitution of India seeking the direction to call him for his personal interview for entrance to the JBT Course as he was not given opportunity to appear, pursuant to the directions issued by this Court in CWP No. 722 of 2004 Ravinder Baloria-vs-State of H.P. and others or alternatively prayed to compensate him in terms of money.

Succinctly, the case of the petitioner has been that he had appeared in the JBT examination under Roll No. 342109 and qualified the written examination. Thereafter, the petitioner along with other candidates was called for the personal interview and

[1] Whether reporters of the Local papers are allowed to see the judgment?

was declared selected on declaration of the result on 15-10-2004 for admission to the said Course. The result of the 'JBT Entrance Test' was challenged in Civil writ petition no. 722 of 2004. Amongst others, the petitioner also being effected party, therefore, he was given an opportunity to defend himself in that writ petition. Ultimately, the selection of the candidates for JBT course was quashed by this Court and the respondents were directed that they may call the candidates who have qualified the written test in the year 2004 for the interviews on the criteria fixed by the Court. Pursuant to that, the respondents issued the call letters to the successful candidates on the basis of the result declared in the written examination which was held on 18.4.2002, the interviews were fixed with effect from 20.7.2006 to 21.7. 2006. It is alleged that since the petitioner had qualified the written examination, he was required to be called for the interview by the respondents. When he did not get any call letter, he enquired the reasons for not calling him for the interview but no satisfactory reply was given by the respondents but the respondent no. 3 had informed him that the call letter was sent to the petitioner under "postal certificate" whereas the petitioner did not receive the same.

Precisely, the case of the petitioner has been that it was mandatory for the respondents to send call letter through registered post to which the presumption is also attached. The letter sent under the postal certificate was not received by him and no presumption of service can be drawn. Thus, sought the relief to direct the respondents to call him for the interview, in the alternative, to pay the compensation to the tune of rupees 5 lacs.

The respondents have filed the reply. The sum and substance of their pleadings is that the respondents had complied with the directions of this Court passed in Civil writ petition No. 722 of 2004. The notice regarding the interview was also published in the newspapers. In addition to it, the letter for personal interview along with other candidates was also sent to the petitioner 'under certificate of posting' copy whereof has been placed on the record as Annexure R4/4 along with the copy of certificate of posting Annexure R4/5. Since the petitioner did not appear in the interview, therefore, no fault can be found with the respondents, therefore, prayed for the dismissal of the writ petition.

We have heard learned counsel for the parties.

The question raised in this petition is very short as to whether the presumption can be attached to the letter sent "under the certificate of posting". However, Shri R.K.Sharma, learned counsel for the petitioner neither has shown to us any law that the letter for the interview was required to be sent to the petitioner under registered cover only nor it was so directed by this Court in C.W.P. No. 722 of 2004, *Ravinder Baloria's case (supra) reported in 2006 (1) Sim.L.C. 257.* It is well established the letter sent "under the certificate of posting", the presumption can be raised under Section 114 of the Indian Evidence Act. Although the nature of presumption under Section 27 of the General Clauses Act is available to the notice sent only by registered post, yet Section 114 of the Evidence Act also raises the presumption to the letters/notices sent by post irrespective of the fact whether it is

sent by ordinary post or under the certificate of posting. Both the presumptions are, however, rebutable.

In *Sukumar Guha –v- Naresh Chandra Ghosh: AIR 1968 Calcutta 49* it has been held that if the letter is sent by post has not been returned to the sender, then it is a case where presumption operates. Whether such presumption has been rebutted depends upon the acceptable evidence but mere denial will not lead invariably to rebut the presumption properly raised. On the other hand, precisely, Section 114, aforesaid, does not lay down any hard and fast rule with regard to the circumstances in which any fact or facts may be presumed to exists nor it can contain the exhaustive list of such facts. However, it only provides the guiding principles but the Court shall be guided by its own experience and knowledge of the common course of natural events in public and private affairs. Since the illustration under Section 114 of the Act ibid could not be confined only to the letters sent under registered post, those sent by ordinary post too are presumed to be delivered to the addressee notwithstanding the circumstances that Section 27 of the General Clauses Act contains the presumption only to the letters sent under registered post.

In *Dineshwar Prasad Singh v, Srimati Manorma Devi, AIR 1978 Patna 256 (DB)*, it has been held that in a case where letter terminating the tenancy under Section 106 of the Transfer of Property Act was sent under the “certificate of posting”, it is presumed to have been delivered to the tenant whose address the letter was proved to bear.

In the present case, the letters were sent to all the candidates in the same process, i.e, under the “postal certificate” and they had attended the interview and no body came forward that he did not get the letter. Even the petitioner has not alleged any malice against any one, whereas the respondents have come with positive assertion that the call letter for the interview, Annexure-R4/4, was sent on the address which is contained in the present petition and “certificate of posting” Annexure R4/5 also contained the same address and roll number. The petitioner belongs to Kangra District and UPC was sent by post office Dharamshala (AHO) on 5.7.2006. This fact has been substantiated by the respondents by filing the letter (Annexure-R4/3) of Deputy Commissioner, Kangra. In fact, the Post office Department, is a wing of the Government and a presumption may, therefore, be raised in favour of the respondents. The letter sent through “certificate of posting”, therefore, cannot be faulted for holding in favour of its service, merely because the presumption as required under Section 27 of the General Clauses Act is not available as against the provisions of Section 114 of the Evidence Act which permits the courts to presume that the official act has been regularly performed. In *Ravinder Baloria’s* case supra, the Court, inter alia, gave the directions that the list of the successful candidates should be published in at least two newspapers having wide circulation in the State and in addition, individual intimation was required to be sent as there was a large number of successful candidates to which the respondents have complied with. Further, the petitioner in para 10 of his petition has also contended

that when the call letter was not received by him, he had contacted the respondents and enquired about the reasons, he was informed that the letter 'under postal certificate' was sent to him. If that being so, it cannot be said that the petitioner did not know about the interview. It was incumbent upon him to have it enquired from the postal authorities immediately or he could have filed the petition in the Court at the earliest and in no case he should have waited till the interview process is over and final result and selection of the candidates is complete.

Therefore, in these circumstances, aforesaid, we are constrained to hold that the letter sent under the 'certificate of posting' raises the presumption and constitutes the evidence of posting. Mere denial of service is of no consequence. Therefore, we do not find any force in this petition. It is dismissed with no order as to costs.

(Deepak Gupta), J.

(Surinder Singh), J.

December 27, 2006
(BM)